

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BYRON EUGENE JOHNSON,

Petitioner,

No. 2: 04-cv-0253 LKK KJN P

vs.

D.L. RUNNELS, et al.,

Respondents.

ORDER

On March 28, 2011, this court denied petitioner's application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is "debatable among jurists of reason," could be resolved differently by a different

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1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 For the reasons set forth in the magistrate judge’s December 14, 2010 findings
4 and recommendations, petitioner has not made a substantial showing of the denial of a
5 constitutional right. Accordingly, a certificate of appealability should not issue in this action.

6 IT IS SO ORDERED.

7 DATED: March 30, 2011.

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11 LAWRENCE K. KARLTON
12 SENIOR JUDGE
13 UNITED STATES DISTRICT COURT
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.